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No. 04-1049

IN THE

Supreme Court of the United States

CARPENTERS HEALTH AND WELFARE TRUST FOR SOUTHERN CALIFORNIA,

Petitioner,

v.

TIMOTHY VONDERHARR; KAREN VONDERHARR, MINOR BY HER GUARDIAN AD LITEM, TIMOTHY VONDERHARR; LAUREN VONDERHARR, MINOR BY HER GUARDIAN AD LITEM TIMOTHY VONDERHARR; SARA VONDERHARR, MINOR BY HER GUARDIAN AD LITEM, TIMOTHY VONDERHARR; CHARLES R. WELDON LAW OFFICES; DOES, ITO X, INCLUSIVE; MCCLELLAN & ASSOCIATES, A PROFESSIONAL CORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's corporate disclosure statement was set forth at page *iii* of its Petition for a Writ of Certiorari, and there are no amendments to that statement.

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INTRODUCTION

In their Brief in Opposition, Respondents completely misapprehend the process of certiorari and the writ Petitioner Carpenters Health and Welfare Trust for Southern California's ("CHWT") filed in this case. Rather than addressing the key issue of why the facts and circumstances here should warrant review of this case, they seem content on submitting a brief on the merits that not only concedes that certiorari should be granted, but also shows why the Ninth Circuit's decision is wrong. In particular, they do nothing to rebut the point that the issue of the availability of money relief under Section 502(a)(3) is an issue of paramount importance to plans and one that should trigger review of this case. In addition, they also offer up no resistance to the circuit conflict that exists on this issue, and in their discussion on the split between the circuits, actually bolster the case for certiorari here. This is because they actually cite another case that supports the Ninth Circuit's view on Section 502(a)(3), which thus creates a more hardened circuit conflict. Also, in pointing out that some of the cases that do not arise of the reimbursement context, they only highlight the fact that this issue is one that extends to other substantive matters. This only emphasizes that this issue is one of great public importance, a point that CHWT raised in its Petition in arguing for review to be granted here.

For all these reasons and those set forth in the Petition and following discussion, CHWT respectfully requests that this Court grant certiorari in this case.

DISCUSSION

A. There Is A Pressing Circuit Conflict On The Issue Of The Availability Of Monetary Relief Under Section 502(a)(3) Of ERISA

In their discussion of how the different circuits have addressed post-*Knudson* Section 502(a)(3) issues, the Respondents somehow conclude that the federal appellate scorecard on this issue is a draw between four circuits. They do so by discounting the decisions of the Third and Fourth Circuits in *Sackman v. Teaneck Nursing Ctr.*, 86 Fed. Appx. 483, 2003 WL 23173649 (3d Cir. 2003) and *Local 109 Ret. Fund v. First Union Nat'l Bank*, 57 Fed. Appx. 139, 2003 WL 152851

(4th Cir. 2003), either because they are unpublished dispositions or because they are not reimbursement cases. To the extent that the Respondents are arguing that unpublished decisions cannot form the basis of a circuit conflict, they are clearly wrong. *Johnson v. United States*, 529 U.S. 694, 699 n.3 (citing to *United States v. Sandoval*. 69 F.3d 531 (1st Cir. 1995) (unpublished table decision) as one case creating a circuit conflict). Because both of these decisions do count in a circuit conflict analysis, the split among those cases is actually four to two.[1] In addition, because the Tenth Circuit has now ruled on this issue, *Administrative Committee of the Wal-mart Associates Health and Welfare Plan v. Melvin Willard*, 393 F.3d 1119 (10th Cir. 2004), the 'score' now is five to two. Respondents, however, argue that the Fourth Circuit's decision is actually a ruling weighing in favor of the Ninth Circuit view of this matter. Setting aside the fact that at least one circuit court, *Rowland*, 367 F.3d at 638 (6th Cir. 2004), has read *Local 109*'s holding differently than Respondents, if in fact *Local 109* is a case that is consistent with the Ninth Circuit's position on this issue, this only shows that there is a more fractious conflict among the circuits which this Court needs to address.[2]

The fact that some of these cases do not arise in the reimbursement context is also unavailing and, in fact, lends further support why certiorari should be granted. In the first place, *Great West Life v. Knudson*, 534 U.S. 204 (2002) itself, was simply an extension of principles announced in *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993), a case which involved issues of nonfiduciary liability under ERISA, issues which clearly are wholly different than the ones giving rise to this litigation. This, in and of itself, demonstrates that it was based

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1. The Third Circuit has issued a published decision based on its application of *Knudson*. *Skretvedt v. E.I. Dupont de Nemours*, 372 F.3d 193 (3d Cir. 2004).

2. In addition, the Fourth Circuit has indeed followed the majority of circuits on this issue. *In Re Carpenter* 36 Fed. Appx. 80, 82, 2002 U.S. App. LEXIS 10615 (4th Cir. 2002) ("*Knudson* therefore does not affect the conclusion of the bankruptcy and district courts that Wal-Mart has an enforceable equitable lien on Carpenter's settlement proceeds. We agree with the conclusion of the bankruptcy and district courts, and we affirm on their reasoning.").

on principles of general application and that such rules of general application can and will extend to many different contexts. Thus, even if some of the cases cited above are non-reimbursement matters, they apply the principles set forth in *Knudson* and are therefore more than fair game in this Petition. Moreover, that there are non-reimbursement cases that apply *Knudson* only shows how important an issue this is to plans like CHWT. Not only will such principles of constructive trust and equitable lien discussed in *Knudson* apply in reimbursement matters, they, as shown in CHWT's Petition, will be at issue in countless other circumstances. Because these circumstances will always involve plan assets or putative plan assets or monetary benefits that participants may be entitled to, this is clearly an issue of great public importance. For all these reasons, certiorari should be granted in this case.

B. Although Unnecessary, None Of The Respondents' Arguments On The Merits Withstand Any Scrutiny

Section V of the Respondents Brief comprises the substance of their response to CHWT's Petition. As noted previously, that response is not directed to whether certiorari should be granted, but one which, at best, weakly supports the merits of the Ninth Circuit's decision. This reply is being made with that qualification in mind and is only being offered for purposes of analytic completeness.

Respondents' argument on the merits founders on two axes of faulty and ill-conceived premises. First, Respondents incorrectly assert that they have committed no wrongdoing here. While wrongdoing need not be shown for CHWT to prevail (an issue that is discussed below), Respondents' assertion is nonetheless patently false. Respondents – in particular, the participant, his family, and their first attorney – signed a lien promising to repay benefits from settlement monies they received from their personal injury lawsuit. When they received such money, the participant and his family deliberately breached their written promise of reimbursement and pocketed the monies they were supposed to tender back to CHWT. This, of course, is clearly wrongdoing. Unfortunately, it was not wrongdoing sufficient for the Ninth Circuit's purposes. This is because, according to the Ninth

Circuit, wrongdoing must occur at the precise time when CHWT tenders benefits, not afterwards when the Respondents wrongfully detain money in contravention of their clear promise upon which CHWT relied. *FMC Corp. v. Owens*, 122 F.3d 1258, 1261 (9th Cir. 1998) ("Owens did not *obtain* FMC's funds by any fraud or wrong-doing. Owens *obtained* the funds pursuant to the Plans, which obligated the funds to be paid to him under the circumstances of this case. FMC's claim is for reimbursement of money that Owens rightfully received under the Plans") (emphasis supplied).) As discussed in the Petition and as will follow, this standard is one followed by the Ninth Circuit alone.

Second, Respondents contend that the Ninth Circuit was correct because the Supreme Court, in *Knudson*, affirmed the *result* the Ninth Circuit reached in that case. That result, of course, was simply that, on the facts of *that case*, the plan there could not seek reimbursement. Respondents transform the tag line in that Supreme Court decision into the Supreme Court's wholesale adoption of *Owens'* "wrongdoing" rationale. The folly of this argument is evident since an affirmance or reversal, in and of itself, can hardly be the basis for dictating rationale or the principles that guide future decisions on the issue presented in such a case. Respondents continue with this train of logic by arguing that *Knudson*'s discussion of the circumstances when a constructive trust or equitable lien would be available is "dicta" which has no bearing on the issues presented here. This argument can easily be dispensed with by referring to the circuit conflict analysis set forth above, and all the courts that have actually applied this "dicta" as a rule of law in cases arising under Section 502(a)(3). As a result, Respondents' reliance on the black letter result of *Knudson* as a basis for extrapolating a rule of law it was announcing is completely misplaced.

Neither is the Respondents reliance on California law helpful to them. Indeed, their citation to California law only strengthens CHWT's side of the argument here. On page 16 of their Brief, Respondents cite to California Civil Code § 2224 to demonstrate the fact that some wrongdoing must be present to impose a constructive trust on another. While that particular

section of the Civil Code does require some wrongdoing in the *acquisition* of property, the section preceding that one, Section 2223, provides for such a trust in instances where the *detention* of the property is wrongdoing itself.

> The principal circumstances where constructive trusts are imposed are set forth in Civil Code sections 2223 and 2224. Section 2223 provides that '[o]ne who wrongfully *detains* a thing is an involuntary trustee thereof, for the benefit of the owner.' Section 2224 states that '[o]ne who *gains* a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.'

This "acquired-detained" dichotomy was one apparently lost on *Owens* and its Ninth Circuit progeny. *Owens* adopted the first part of that dichotomy, but perplexingly dispensed with the second part of it. This is obviously significant in reimbursement cases since, in each such case, there will not be a wrongful acquisition, but a detention issue with respect to the imposition of a constructive trust. This was true in this case where there was no issue of wrongdoing in the initial transfer of benefits (though a theory of fraud may be in order given some of the facts that have developed), but a subsequent question of detention of such funds later on. To apply the Ninth Circuit's rule here would be to erect an insuperable barrier that entities like CHWT could never overcome. To this end, there is simply no court that CHWT is aware of that adopts such an "acquisition only" rule where it applies to constructive trust. This is borne out not only by Civil Code § 2233 above, but by other circuits of appeal set forth in CHWT's Petition that have imposed constructive trusts in "detention" reimbursement cases.

Harris Trust v. Salomon Smith Barney, 530 U.S. 238 (2000), a case whose holding the Respondents completely misrepresent to the Court, leaves no doubt as to this conclusion. In that case, the Supreme Court, quoting from Dobbs, asserted the

longstanding equitable rule that a "constructive trust is about property not wrongs." As the plain wording of this rule suggests, there is no wrongdoing requirement necessary to impose a constructive trust. (Even if there were, the Respondents' breach of the promises set forth in their lien is wrongful detention, which, in and of itself, is wrongful conduct sufficient to impose a constructive trust in this case.) Seemingly unable to thwart the dispositive impact of that holding, the Respondents launch an elaborate and byzantine attempt to obfuscate it. In particular, they cite to numerous parts of *Harris Trust*'s decision which mention wrongful conduct, yet lack the basic candor to disclose that those allusions in no way ever signaled the Court's intent to make wrongful conduct a necessary element for a constructive trust. Indeed, in the Respondents fictitious view of things, because *Harris Trust* made several allusions to this wrongful conduct, the Respondents can cobble together some conclusion that these extant references transform Dobbs' clear statement that wrongful conduct is not necessary to a rule requiring such conduct. Apart from the confounding logic that underlies this point, courts have read Dobbs' statement to mean what it says: "Contrary to Rowland's assertions, a plaintiff is not necessarily required to prove wrongdoing by the defendant in order to obtain relief through imposition of a constructive trust or an equitable lien." *Id.* at 597-98. *Rowland*, 367 F.3d at 649.

The Respondents then cite to other works of learned scholars upon whom the Supreme Court relied on in fashioning trust law under ERISA. In doing so, they pass them off as commentators that confirm what they have been arguing all along. This is not only false, it borders on reproachable conduct. For instance, the Respondents represent Section 471 and other sections of George Bogert's treatise on "Law of Trusts and Trustees" to state that a constructive trust may be based on wrongdoing. However, they deliberately omit that part of Section 471 which actually sets forth the rule that constructive trusts need not based on wrongdoing.

> It has sometimes been stated that "fraud" is at the bottom of every constructive trust. "Fraud" is, of course, a very ambiguous word. It may mean

> misrepresentation which would give ground for an action in deceit. It may imply the acquisition of property by some other type of wrongdoing or by any type of inequitable conduct. Certainly, *it is not true that all constructive trusts are based on "fraud"* unless that word is used in its broadest sense to include all conduct which equity treats as unfair, unconscionable and *unjust.*

G. Bogert, Law of Trusts and Trustees § 471, pp. 22-23 (rev. 2d ed. 1995) (emphasis supplied). Also conveniently absent from their discussion of these treatises is Scott, The Law of Trust, 4th ed. 1989. In Section 462.2 of his work, Scott goes even further and states: " A constructive trust may arise, however, even though the *acquisition* of the property was *not wrongful.* It arises where retention of the property would result in the unjust enrichment of the person retaining it."As these commentators explain, while wrongdoing *may* form the basis of imposing a constructive trust, it is by no means a *requirement.* In this case, because Respondents have committed wrongdoing by, among other things, promising but failing to reimburse CHWT for the benefits it paid to them, a constructive trust should have been imposed. This trust should have been imposed on the Vonderharr Respondents' first attorney's trust fund and the Special Needs Trust that was created for the two minor children.[3]

The Respondents round off their argument on the merits by contending that because two pools of money are present here – one which contains benefit payments CHWT made to medical care providers and the other which consists of settlement monies – and because benefits were never explicitly made to the Respondents themselves, relief is unavailable. CHWT can simply respond to this bald statement of the law

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3. It bears noting here that because the Respondents failed to disclose anything about the status of the settlement monies, CHWT is at a loss to determine where some money may be. The first attorney's client trust fund was such a pool of identifiable funds as was the other attorney's client trust accounts. Also, as noted by *Knudson*, a case which (as this one) arose out of California, a Special Needs Trust created for the minor Vonderharrs is in existence and another pool of monies that can be subject to a constructive trust.

by noting that this theory was never one used to justify denying relief under Section 502(a)(3) in any case. In addition, in virtually all the cases in the circuit conflict section mentioned above, there were two pools of money, a fact which did not persuade any of those courts to grant or deny constructive trust or equitable lien relief under Section 502(a)(3).

C. In Their Brief, Respondents Register No Response To The Circuit Conflict That Exists With Respect To The Fees Issues Discussed In CHWT's Petition. In Addition, They Offer Yet Another Weak Response On The Merits To Those Issues

In their brief, Respondents make no attempt to address the points raised by CHWT on the jurisdictional issue affecting fee awards under Section 502(a)(3). In particular, they do nothing to reconcile the glaring circuit conflict between all other circuits and the Ninth Circuit on that issue and the fact that the Ninth Circuit itself has admitted to its own intra-circuit conflict on that question. They also fail to take issue with any of the substantive points raised by CHWT. For these reasons, this is simply an admission that certiorari is proper here and that the fee award should be vacated for lack of jurisdiction.

Respondents' response to the "special circumstances" rule is equally infirm. Like the other issues CHWT seeks certiorari on, they race past the issues relating to certiorari and proceed to offer an argument on the merits. Their entire argument on the merits is completely flawed since it is based on a complete misreading of a Ninth Circuit case, *Smith v. CMTA-IAM Pension Trust*, 746 F.2d 587 (9th Cir. 1984). This case is wholly inapposite since it applies to situations where, unlike here, the participant was a prevailing plaintiff and the case involved a suit for benefits. Indeed, it is the exception to the general rule that courts, even as recognized by the Ninth Circuit itself in *Smith*, must apply a five-factor test resembling that set forth in *Hummell v. Rykoff*, 634 F. 2d 446 (9th Cir. 1980). The Ninth Circuit, in fact, did just that in applying that five factor test in a post-*Knudson* matter that is substantively indistinguishable to this one. *Honolulu Joint Apprenticeship & Training Comm. of United Ass'n Local Union No. 675 v. Foster*, 332 F.3d 1234 (9th Cir. 2003). While the Respondents quote to portions of

Smith that rely on this Court's prior fee decisions, those excerpts are hardly helpful to them if they do not, as here, arise out of the same circumstances as presented in *Smith*. Not only is this evident in that opinion itself, it was evident to the trial judge in this matter, and to the several other circuit courts of appeal referred to in CHWT's Petition that have addressed this issue by applying the five-factor test mentioned above. Accordingly, for all these reasons and those mentioned above certiorari should be granted in this case.

D. Respondents Raise Other Arguments Which Are Neither Germane To The Issues Bearing On Certiorari Or The Merits In This Case

Apart from Section V, the remainder of Respondents' Brief is a menagerie of other arguments that are neither relevant to the issues of certiorari nor to that of the merits of this matter. For instance, in Section I, Respondents make an argument on the merits of the preemption ruling in this case. Respondents did not seek certiorari on that issue and it is thus not relevant here. Section II is a rambling discourse on how plan provisions that are buried in pages of plan documents are not readily apparent to participants and thus impose obligations that participants are not aware of. How this issue is relevant at all in this proceeding is baffling. In any case, the Respondents' assertion lacks merit since the participant here was directly alerted to the reimbursement obligation when he signed a lien promising to reimburse CHWT, a lien that he, after being paid medical benefits on his behalf, fraudulently refused to pay them back.

Section III is a frequent refrain made by the Respondents that CHWT could foresee the development of reimbursement jurisprudence in the Ninth Circuit and the federal appellate courts. Based on this foresight, Respondents claim that CHWT could respond to their developing caselaw by requiring that its "underwriters" take into account any financial shortfalls based on that caselaw. This proposition bespeaks a fundamental and grave misunderstanding of multi-employer plans. Such plans are creatures of collective bargaining agreements. They receive funding for contributions made by employers signatory to those agreements, contributions which are set not by "underwriters" but by labor and management

representatives at the bargaining table. These contributions are a small part of a much larger dialogue between labor and management that involves wages, contributions for other entities, and many other issues that qualify as mandatory subjects of bargaining under Section 8(a)(5) of the National Labor Relations Act. Setting aside the point about whether these lay parties could actually foresee how reimbursement law under Section 502(a) would evolve, there is simply no "underwriting" process whatsoever.

In Section IV, the Respondents argue that they were not unjustly enriched. Aside from the overwhelming majority of other courts of appeal set forth above that do not agree with them, it bears repeating that this issue must be viewed through the prism of entities covered by ERISA that owe certain duties to *all* of its participants and beneficiaries, a sentiment expressed by the district court judge in this matter.

> Defendants did not seek to benefit other ERISA participants and beneficiaries of the plan. By retaining the money expended by [CWHT] on their behalf while receiving funds from the underlying state court settlement, [defendants] have actually reaped a windfall at the expense of all... Ultimately the legal question decided in this case will benefit only a subset of participants and beneficiaries. Moreover, as discussed above, Defendants did not seek to vindicate a right under ERISA as much as they sought to secure a windfall from [CHWT's] inability to obtain reimbursement.

Finally, the Respondents claim that the "make whole" doctrine should bar relief in this case. This argument is based on their factual representation that the costs and fees in this case exceed the amount of CHWT's lien. If in fact this were true, CHWT, as noted in footnote 1 of its Petition, contains a similar rule and may in fact end this case. Why they are offering these facts now, however, is completely confounding, and wholly irrelevant to the issues raised here.

CONCLUSION

For all the foregoing reasons, this Court should grant CHWT's Petition for Certiorari.

Respectfully submitted,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether a civil action brought under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1132(a)(3), to enforce a plan term requiring reimbursement of plan-paid medical expenses from funds a participant recovers from a third party responsible for the underlying illness or injury, is an action for "appropriate equitable relief" authorized by that section, when reimbursement is sought through imposition of a constructive trust or an equitable lien on the net proceeds of the third-party recovery.

2. Whether a court lacks subject matter jurisdiction to award attorney's fees under Section 502(g)(1) of ERISA, 29 U.S.C. 1132(g)(1), if it concludes that the plan's reimbursement action is not authorized by Section 502(a)(3).

3. Whether a court that has jurisdiction to award attorney's fees under Section 502(g)(1) of ERISA must ordinarily award fees to a prevailing participant unless special circumstances make an award unjust.

4. Whether the reimbursement and attorney's fee questions are moot in light of the parties' April 14, 2005, settlement.

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In the Supreme Court of the United States

No. 04-1049

CARPENTERS HEALTH AND WELFARE TRUST FOR SOUTHERN CALIFORNIA, PETITIONER

v.

TIMOTHY VONDERHARR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the order of this Court inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Petitioner is a collectively-bargained employee-benefit trust that provides medical benefits to carpenters in the southwest United States. Pet. App. 3a. The plan administered by petitioner contained a reimbursement provision requiring that, if a plan participant or beneficiary

> has received * * * payments * * * in whole or in part for injury or illness for which benefits are otherwise provided by the [plan], you * * * are required to reimburse the [plan] from the net proceeds of these payments, up to the actual amount of benefits paid by the * * * [plan] for expenses arising from that injury or illness.

Ibid. The provision also noted that a participant or beneficiary "will be required to sign documents to carry out the [plan's] reimbursement rights." *Ibid.*

Respondent Timothy Vonderharr was covered by the collective bargaining agreement, and he and his dependents were therefore entitled to medical benefits provided by petitioner. Four members of Vonderharr's family were injured in an automobile accident in December 1998. Before petitioner would pay medical benefits, petitioner required the Vonderharrs and their attorney, Charles Weldon, to sign a document giving the plan a lien on any subsequent recovery they obtained as a result of the accident. Petitioner ultimately provided the Vonderharr family $155,224 in medical benefits resulting from the accident. Pet. App. 2a-3a. The Vonderharrs subsequently recovered money in settlements with third parties allegedly responsible for the accident. *Id.* at 4a.

Petitioner brought an action in the United States District Court for the Central District of California against the Vonderharrs and their attorneys to enforce the reimbursement requirement. Pet. App. 4a, 14a. Petitioner asserted claims under state law and a right to reimbursement and declaratory relief under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1132(a)(3). Pet. App. 15a. Section 502(a)(3) permits an action "(A) to enjoin any act or practice which violates any provision of [Title I of ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of [Title I of ERISA] or the terms of the plan." 29 U.S.C. 1132(a)(3). In an amended complaint, petitioner requested imposition of a constructive trust or equitable lien on the proceeds of the third-party recoveries that were in the possession of the Vonderharrs or their attorneys. See Pet. App. 16a, 27a.

2. a. The district court dismissed the state-law claims as preempted by ERISA. See Pet. App. 11a-12a, 27a.[1] The court also dismissed the ERISA claim for reimbursement as not authorized by ERISA. *Id.* at 28a-31a. The court reasoned that a claim for "equitable relief" under Section 502(a)(3) is a claim for a category of relief that was typically available in equity and does not include a claim for legal restitution. *Id.* at 28a-29a; see *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 210 (2002). And the district court recognized that a constructive trust and equitable lien are "subspecies of equitable restitution." Pet. App. 29a. The court reasoned, however, that petitioner could not state a claim for such relief, because it could not show that the Vonderharrs and their attorneys had obtained the third-party recoveries "through some wrongful means, such as fraud, duress, breach of fiduciary duty, or unconscionable behavior." *Id.* at 30a. The court deemed it "irrelevant" whether the money was in the possession of the Vonderharrs or their attorneys. *Id.* at 31a.

b. In a later decision, the district court denied respondents' request for attorney's fees under Section 502(g)(1) of ERISA, 29 U.S.C. 1132(g)(1). Pet. App. 14a-24a. Under that provision, in "any action under [Title I of ERISA] * * *, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. 1132(g)(1). The district court concluded that respondents were not entitled to attorney's fees after applying a five-factor test that considers: (1) the degree of the opposing parties' culpability or bad faith, (2) the ability of the opposing parties to satisfy a fee award, (3) whether an award would deter others from acting in similar circumstances, (4) whether the parties requesting fees

[1] The court of appeals reversed the dismissal of the state-law claims. Pet. App. 11a-12a. Petitioner has not sought further review of that ruling, and it is therefore not at issue on this petition.

sought to benefit all plan participants and beneficiaries or to resolve a significant legal issue under ERISA, and (5) the relative merits of the parties' positions. Pet. App. 16a-17a. The district court rejected respondents' request to apply a "special circumstances" rule, under which attorney's fees would generally be awarded to a prevailing plan participant unless special circumstances make such an award unjust. *Id.* at 18a-19a.

3. The court of appeals affirmed the dismissal of petitioner's claims under Section 502(a)(3) of ERISA but reversed and remanded the denial of respondents' motion for attorney's fees. Pet. App. 1a-13a. The court of appeals concluded that an action seeking to enforce an ERISA plan's contractual reimbursement provisions does not fall within Section 502(a)(3). *Id.* at 7a-9a. The court further concluded that restitution and the imposition of a constructive trust are available under Section 502(a)(3), "but only as true equitable remedies and provided the traditional requirements of fraud or wrong-doing are satisfied." *Id.* at 9a. Stating that petitioner's claims "are nothing more than garden-variety legal claims for contractual restitution that are not cognizable under ERISA," the court of appeals affirmed the dismissal of those claims. *Id.* at 11a.

On the attorney's fee issue, the court of appeals held that although the district court's use of the five-factor test "was certainly proper" under Section 502(g)(1), the district court erred by paying "little heed to the principles underlying the 'special circumstances' doctrine." Pet. App. 12a. Finding no "special circumstances" to render an award of attorney's fees unjust in this case, the court reversed the denial of attorney's fees and directed the district court to determine appropriate fees on remand after all state-law claims are determined. *Id.* at 13a.